

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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BENJAMIN F. NASH,

Plaintiff/Counter Defendant-  
Appellant,

and

CHERYL A. YECK,

Plaintiff-Appellant,

v

GREAT LAKES ENERGY COOP,

Defendant/Counter Plaintiff/Third-  
Party Plaintiff-Appellee,

and

SUSAN R. NASH,

Third-Party Defendant.

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UNPUBLISHED

February 9, 2010

No. 286569

Kalkaska Circuit Court

LC No. 06-009330-CH

Before: Beckering, P.J., and Markey and Borrello, JJ.

PER CURIAM.

Plaintiffs appeal as of right an order of the trial court dismissing their case following a bench trial. This case concerns a parcel of land referred to as “Parcel 1,” on which an easement was granted, the validity of which is now in question. Plaintiffs brought this suit to quiet title, disputing the validity of an easement that lacked the signature of one of the owners of Parcel 1. We reverse and remand for further proceedings. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Plaintiffs argue that because an easement is an interest in property, and as such, must be conveyed by a signed writing in order to be valid, and plaintiff Cheryl Yeck, one of the owners of Parcel 1, did not sign the conveyance of easement, the easement is void under the statute of frauds. We agree.

Under a strict reading of the statute of frauds, there can be no valid easement here. The statute provides as follows:

No . . . interest in lands, other than leases for a term not exceeding 1 year, . . . shall hereafter be created, granted, assigned, surrendered or declared, unless by act or operation of law, or by a deed or conveyance in writing, subscribed by the party creating, granting, assigning, surrendering or declaring the same, or by some person thereunto by him lawfully authorized by writing. [MCL 566.106.]

Further, when the property in question is held jointly, all owners must sign, or the contract is void. See *Fields v Korn*, 366 Mich 108, 109-110; 113 NW2d 860 (1962).

It is not disputed that there was no writing signed by Yeck, nor is it disputed that she is and at all relevant times was an owner of Parcel 1. Yeck's acceptance of Parcel 1 subject to easements only subjects her to valid easements, and does not subject her to invalid easements, or prevent her from contesting an easement. See *Von Meding v Strahl*, 319 Mich 598, 609; 30 NW2d 363 (1948).

Defendant argues that even if there was no conveyance that satisfied the statute of frauds, it is appropriate to enforce the easement by estoppel. Plaintiffs rely on *Kitchen v Kitchen*, 465 Mich 654, 660; 641 NW2d 245 (2002) for the proposition that an "interest in land cannot be established on the basis of estoppel." Defendant points out, correctly, that that quote was summarizing the state of the law before *Kitchen*.

*Kitchen* held "that Michigan law does not permit an oral license to ripen into a permanent interest in the use of land on the basis of estoppel alone. Accordingly, in order to constitute a permanent interest, plaintiffs' alleged license would have to have been conveyed through a deed or conveyance in compliance with the statute of frauds." *Id.* at 663-664. Defendant argues that in employing the word "alone", the *Kitchen* Court indicated its intent to leave open the possibility that a permanent interest in land could be created by estoppel coupled with some appropriate circumstances other than compliance with the statute of frauds. Reading the holding in context makes clear that the *Kitchen* Court viewed compliance with the statute of frauds as a necessity. In the same opinion, the Court noted that "[t]here has been no authority in Michigan that clearly and unequivocally addresses whether an oral license can become irrevocable by estoppel. We now firmly establish that it cannot." *Id.* at 662. *Kitchen* is unequivocal in its requirement of a signed writing that complies with the statute of frauds, and reversal is required.

Defendant's third-party claim/counterclaim is dependent on the easement being held invalid. The trial court dismissed this claim as moot because it upheld the easement. However, because the easement is invalid, the third-party claim/counterclaim is no longer moot.

We reverse and remand to the trial court for a determination of the merits of the third-party claim. Plaintiffs, being the prevailing parties, may tax costs pursuant to MCR 7.219. We do not retain jurisdiction.

/s/ Jane M. Beckering

/s/ Jane E. Markey

/s/ Stephen L. Borrello